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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,131	01/22/2004	Kenneth Von Felten	702-107	6403
20874	7590	08/24/2005	EXAMINER	
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			KASZTEJNA, MATTHEW JOHN	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/763,131

Applicant(s)

VON FELTEN ET AL.

Examiner

Matthew J. Kasztejna

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/2/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Notice of Amendment***

In response to the amendment filed on June 2, 2005: amended claims 1, 7-8, 22 and 24 and the cancellation of claim 6 are acknowledged. The rejection of claims 1-5, 9-12, 15-19 and 21-26 under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No. 6,083,152 to Strong in view of U.S Patent No. 4,899,787 to Ouchi et al. is *withdrawn*. Claims 7-8, 13-14 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No. 6,083,152 to Strong in view of U.S Patent No. 4,899,787 to Ouchi et al. in further view of U.S. Patent No. 5,741,429 to Donadio, III et al. The following new and reiterated grounds of rejection are set forth:

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 7-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No. 6,083,152 to Strong in view of U.S Patent No. 4,899,787 to Ouchi et al. in further view of U.S. Patent No. 5,741,429 to Donadio, III et al.

**In regards to claims 1, 7-8, 10, 13-14, 20 and 22-23**, Strong discloses a helically wound spiral tube 14; a first braided tube 18 disposed at least partially over the helically wound spiral tube and a first polymeric layer 34 which is applied to the outer layer of the first braided tube (see Figs. 1 and 2). However, Strong is silent with respect

Art Unit: 3739

to a second braided tube disposed at least partially over the first braided tube and which has a second polymeric layer coating upon itself. Ouchi et al. teach of an analogous flexible tube for endoscope having basic tubular core structures comprising metallic tubular spirals and meshwork tubes positioned alternately one over the other in a multilayered manner (see Fig. 4 and Col. 6, Line 65-Col. 7, Line 10). It would have been obvious to one skilled in the art to include a second braided tube in the apparatus of Strong in order to provide a tube with varying properties of flexibility as taught by Ouchi et al. Furthermore, Ouchi et al. and Strong are silent with respect to the braided tube having a wire braid which varies along its length. Donadio, III et al. teach of an analogous flexible tubular device having a multi-wire coil 21 which is capable of being formed in varying configurations, from the angle of the braided wire to the number of filaments the braided wire is composed of. Depending on the braid angle the tube will either be more flexible or stiffer (see Col. 6, Line 52 – Col 7, Line 14). It would have been obvious to one skilled in the art to vary the braid angle of the wire braid over the length of the tube in the apparatus of Strong and Ouchi et al. in order to provide a tube with varying flexibility characteristics over its entire length as taught by Donadio, III et al.

**In regards to claims 2-5 and 15-16,** Strong discloses a helically wound spiral tube wherein the first braided tube includes a wire braid having a braid angle of about or less than about 45 degrees relative to the longitudinal axis of the first braided tube, as seen in Figure 1. It would have been obvious to one skilled in the art at the time the invention was made to construct a second braid, as taught by Ouchi et al. and Donadio, III et al., wherein the second braid included a wire braid of about or greater than about

Art Unit: 3739

45 degrees relative to the axis of the second longitudinal axis of the second braided tube in order to have control over the flexibility properties of the tube.

**In regards to claims 9, 11-12, 17-19 and 21**, Strong discloses a helically wound spiral tube wherein the first braided tube includes a plurality of stainless steel wires or other suitable materials with similar physical properties as is well-known in the art (see Col. 3, Lines 50-55).

**In regards to claims 24-26**, Strong discloses a helically wound spiral tube which is used in conjunction with an endoscope to inspect body cavities. The elongate distal tubular insertion section is used for carrying an imaging optical system, such as a CCD imager as is well-known in the art, and an illumination system to illuminate a target site from which image data is transmitted therefrom and displayed on a displayed means, as is well-known in the art (see Col. 1, Lines 9-20).

### ***Response to Arguments***

Applicant's arguments, see pages 10-11, filed June 2, 2005, with respect to the rejection(s) of claim(s) 1-5, 9-12, 15-19 and 21-26 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent No. 5,741,429 to Donadio, III et al.

Applicant states that Donadio, III et al. does not list braid angle among the "characteristics " that can be varied to control the flexibility characteristics of the tube. However, Donadio, III et al. teach that it is appreciated that by varying the configuration of the multi-wire coil, a coated flexible tubular member 20 of varying characteristics can

Art Unit: 3739

be formed. For example, making the individual coils more circular will result in a flexible tubular member which has a greater hoop strength and stiffness, while making the individual coils more longitudinally extending will result in less hoop strength but more flexibility (see Col. 6, Lines 52-61). Thus, Donadio, III et al. essentially teaches that by varying the braid angle one can control the flexibility of a tubular member. Furthermore, Donadio teaches of varying the flexibility of the tubular member of the length of the tube, and thus making it obvious to one skilled in the art that varying the two braid angles above and below 45 degrees will result in a tube with varying flexibility characteristics over its length.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3739

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJK

*MJK*

8/8/05



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